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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

..... X

THE NEW YORK TIMES COMPANY and  
ADAM GOLDMAN,

Plaintiffs,

22 Civ. 3609 (JMF)

v.

**ANSWER**

EXECUTIVE OFFICE FOR UNITED  
STATES ATTORNEYS,

Defendant.

..... X

Defendant the Executive Office for United States Attorneys (“EOUSA”), by its attorney, Damian Williams, United States Attorney for the Southern District of New York, answers the complaint upon information and belief as follows:

1. The allegations in paragraph 1 consist of plaintiffs’ characterization of this action, to which no response is required. To the extent a response is deemed required, defendant admits that plaintiffs purport to bring this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, but denies that plaintiffs are entitled to any relief.

### **PARTIES**

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3.

4. Admits that EOUSA is an office within the United States Department of Justice (“DOJ”), but denies knowledge or information sufficient to form a belief as to the truth of the allegation that EOUSA “has possession and control of the records that Plaintiffs seek.”

### **JURISDICTION AND VENUE**

5. Paragraph 5 consists of legal conclusions concerning jurisdiction, to which no response is required.

6. Paragraph 6 consists of legal conclusions concerning venue, to which no response is required.

7. Paragraph 7 consists of plaintiffs’ conclusions of law regarding the timeframe during which FOIA requires agencies to respond to requests, to which no response is required.

8. Paragraph 8 consists of plaintiffs’ conclusions of law regarding defendant’s purported noncompliance with FOIA’s statutory deadlines and plaintiffs’ purported exhaustion of their administrative remedies, to which no response is required.

### **FACTS**

9. Paragraph 9 consists of alleged background information, not allegations of fact pertinent to the resolution of the claims at issue in this FOIA action, to which no response is required. Defendant respectfully refers the Court to the cited document filed in *United States v. Flynn*, No. 17-cr-00232 (D.D.C.), for a complete and accurate statement of its contents.

10. Paragraph 10 consists of alleged background information, not allegations of fact pertinent to the resolution of the claims at issue in this FOIA action, to which no response is required. Defendant respectfully refers the Court to the cited document filed in *United States v. Flynn*, No. 17-cr-00232 (D.D.C.), for a complete and accurate statement of its contents.

11. Paragraph 11 consists of alleged background information, not allegations of fact pertinent to the resolution of the claims at issue in this FOIA action, to which no response is required. Defendant respectfully refers the Court to the cited news article for a complete and accurate statement of its contents.

12. Paragraph 12 consists of alleged background information, not allegations of fact pertinent to the resolution of the claims at issue in this FOIA action, to which no response is required. Defendant respectfully refers the Court to the cited news article for a complete and accurate statement of its contents.

13. Paragraph 13 consists of alleged background information, not allegations of fact pertinent to the resolution of the claims at issue in this FOIA action, to which no response is required. Defendant respectfully refers the Court to the cited document filed in *United States v. Flynn*, No. 17-cr-00232 (D.D.C.), and the cited news article, for complete and accurate statements of their contents.

14. Paragraph 14 consists of plaintiffs' characterization of DOJ's motion to dismiss, cited in paragraph 13, to which no response is required. Defendant respectfully refers the Court to the motion for a complete and accurate statement of its contents.

15. Paragraph 15 consists of alleged background information, not allegations of fact pertinent to the resolution of the claims at issue in this FOIA action, to which no response is required. Defendant respectfully refers the Court to the cited document filed in *United States v.*

*Flynn*, No. 17-cr-00232 (D.D.C.), and the cited news article for complete and accurate statements of their contents.

16. Paragraph 16 consists of alleged background information, not allegations of fact pertinent to the resolution of the claims at issue in this FOIA action, to which no response is required. Defendant respectfully refers the Court to the cited document filed in *United States v. Flynn*, No. 17-cr-00232 (D.D.C.), for a complete and accurate statement of its contents.

17. Admits the allegations in paragraph 17.

18. Admits the allegations in paragraph 18.

19. Admits the allegations in paragraph 19.

20. Admits the allegations in paragraph 20.

21. Admits the allegations in paragraph 21.

22. Admits the allegations in paragraph 22.

23. Admits that, as of the date of plaintiffs' complaint, EOUSA had not communicated further with plaintiffs concerning their FOIA request or administrative appeal.

#### **CAUSE OF ACTION**

24. Paragraph 24 "repeat[s], reallege[s], and reincorporate[s] the allegations" in the foregoing paragraphs of plaintiffs' complaint. Defendant incorporates by reference its answers to the relevant paragraphs.

25. Paragraph 25 consists of plaintiffs' conclusions of law concerning EOUSA's obligations under FOIA, to which no response is required. To the extent a response is deemed required, defendant denies the allegations in paragraph 25, except admits that EOUSA is subject to FOIA.

26. Paragraph 26 consists of plaintiffs' conclusions of law regarding defendant's

purported noncompliance with FOIA's statutory deadlines and plaintiffs' purported exhaustion of their administrative remedies, to which no response is required. To the extent a response is deemed required, defendant denies the allegations in paragraph 26.

27. Paragraph 27 consists of plaintiffs' conclusions of law regarding EOUSA's authority "to withhold documents or parts of documents" under FOIA, to which no response is required. To the extent a response is deemed required, defendant admits that EOUSA may withhold records, in whole or in part, pursuant to FOIA's statutory exemptions, and otherwise denies the allegations in paragraph 27.

28. Denies the allegations in paragraph 28.

29. Denies the allegations in paragraph 29.

\* \* \*

The remainder of the complaint consists of plaintiffs' Request for Relief, to which no response is required. To the extent a response is deemed required, defendant denies the allegations contained in the remainder of the complaint and states that plaintiffs are not entitled to the requested relief, or any relief whatsoever.

### DEFENSES

Defendant denies each and every allegation of the complaint not expressly admitted in its answer. For its specific defenses, defendant states as follows:

#### FIRST DEFENSE

Plaintiffs fail to state a claim upon which relief may be granted.

#### SECOND DEFENSE

Some or all of the requested records are exempt from disclosure under FOIA. *See* 5 U.S.C. § 552(b).

THIRD DEFENSE

The Court lacks subject matter jurisdiction over any request for relief that exceeds the relief authorized under FOIA, 5 U.S.C. § 552.

FOURTH DEFENSE

Plaintiff is not entitled to expedited processing or expedited consideration under 28 U.S.C. § 1657.

Defendant may have additional defenses which are presently unknown but may be ascertained at a later time. Defendant reserves the right to assert each and every affirmative or other defense that may be available, including any defenses available pursuant to Federal Rules of Civil Procedure 8 and 12.

WHEREFORE, defendant EOUSA is entitled to judgment dismissing the complaint with prejudice and granting such further relief as the Court deems just, including costs and disbursements.

Dated: New York, New York  
June 6, 2022

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